

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

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PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 17181 of 2004

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Between:

A.V.Rama Sastry, S/o Chittaranjan Das,
R/o Polukonda, Nandiwada Mandal, Krishna District

..... PETITIONER

AND

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1 The Government of Andhra Pradesh Panchayat Raj &

Rural Development (PTS.IV) Department,
rep.by Principal Secretary, Secretariat, Hyderabad

2 The District Collector, Krishna District

3 The District Panchayat Officer, Krishna District,

Machilipatnam

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order, direction particularly one in the nature of a Writ of Mandamus declaring order passed by the 1st respondent in G.O.Rt.No.1365 dated 10-09-2004 as illegal, untenable and arbitrary and set aside the same.

Counsel for the Petitioner: MR.P.SRI RAGHU RAM

Counsel for Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court at the admission stage made the following :

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for

Panchayat Raj & Rural Development for the respondents. Both have no objection for disposal of the writ petition at the admission stage.

Petitioner, who was elected as Sarpanch of the Gram Panchayat during the year 1995, states that the bus shelter, which was in existence in the Gram Panchayat, Kollukonda Village of Nandiwada Mandal, Krishna District was completely covered with mud due to heavy rains in the year 1997. Thereafter, a decision was taken by him to construct the same for the public purpose with his own expenses. On such construction the said bus shelter was inaugurated on 28-8-1997 by the then Education Minister and since then the property was assessed by the local authority and the two rooms constructed on the first floor of the bus shelter were leased out and rents received by him were utilized for developmental activities. Since the land belongs to the Water Distributory Committee, he applied for permission for construction of bus shelter in memory of his late parents, and the same was accorded on 30-11-1998 by the Committee Chairman. In view of the same the permission, if any obtained, obviously was after the construction made by the petitioner. When the second respondent issued proceedings directing the third respondent to take over the possession of the bus shelter, petitioner filed a revision petition before the first respondent and obtained stay on 5-2-2002. The Government after verifying the records, by the impugned G.O.Ms.No.1365 dated 10-9-2004 confirmed the orders passed by the Collector. The correctness of the said order is now challenged in this writ petition contending that the Government has not assigned any reasons for dismissal of the revision and the same is arbitrary and illegal.

The District Panchayat Officer in Rc.No.3835 of 2001 dated 25-12-2001, on the reference made by the Sarpanch about the allegations of occupation of the bus shelter by the petitioner, conducted an enquiry and after giving due opportunity to the petitioner held that the bus shelter along with two shops belong to Gram Panchayat and hence, the Executive Officer was directed to take possession of the same and to collect rents, which were collected by the petitioner, and credit the same into the Gram Panchayat account. The said order has not been challenged by the petitioner. In the order dated 25-12-2001 it has been observed by the District Panchayat Officer that in the Minutes book of the Gram Panchayat at Page 10, dated 20-11-1999 there is an entry as per the resolution No.P-130 for construction of bus shelter. The estimated total cost was noted as Rs.66,000/- and for technical sanction

it was sent to the District Collector, Kirshna District. As per resolution No.21, dated 12-2-1996 the Panchayat authorities granted permission to one Mr. Gandhi to construct bus shelter and in the Gram Panchayat Tax books at page No.31 construction of passengers' rest rooms in the said bus shelter was noted. In the house tax register at page No.84 of the first volume Sy.No.264 for the year 1997-98 at assessment No.157 the tax amount was mentioned as Rs.141/-. All these put together shows that the said bus shelter was constructed with the funds of the Gram Panchayat and was in occupation of Sri A.V. Rama Sastry. The statement made by Sri Rama Sastry that he himself constructed the bus shelter and two shops above the bus shelter with his own expenses, was not accepted by the District Panchayat Officer and accordingly the petitioner was directed to surrender the bus shelter to the Executive Officer and the rents collected from 1997-98 on wards were directed to be remitted to the Gram Panchayat. As he failed to remit the same, a consequential order dated 12-4-2002 was passed directing the Executive Officer to take over the bus shelter along with two shop rooms, which were constructed by the Ex-Sarpanch and also for recovery of the amounts collected by him. At that stage, the petitioner filed the above revision challenging the proceedings dated 25-12-2001 in R.C.No.3835 of 2001 and consequential proceedings issued by the District Collector in Roc.No.95/2002 dated 15-1-2002. The Government initially granted stay, but, subsequently vacated the same by the impugned order.

Learned counsel for the petitioner submits that the Government has not recorded any reasons in the revision while dismissing the same, in spite of the fact that the land on which bus shelter was constructed belongs to Water Distributory Committee, petitioner was permitted to make construction.

Since after receipt of records, the petitioner was given sufficient opportunity and he had appeared along with his counsel, but, had not produced any evidence except the records, the Government confirmed the order passed by the District Panchayat Officer and dismissed the revision. No other evidence was produced by the petitioner except the assertion that the bus shelter was constructed by him with his own funds, for which he failed to produce evidence before the District Panchayat Officer, who conducted an enquiry and ordered for surrender of the premises. In view of the same, the submission made by the learned counsel for the petitioner that the Government has not assigned any reasons in confirming the order, cannot be countenanced since no other evidence was produced by the petitioner except the

records which were made available and the findings arrived at by the District Panchayat Officer in his proceedings dated 25-12-2001.

A Division Bench of this court in ***Thukivakam Gram Panchayat by its President, A. Easwara Reddy V. The District Collector, Chittoor*** while considering the revisionary powers of Government under Section 232 of Andhra Pradesh Gram Panchayat Act 1964 held as under:

Section 232 of the Gram Panchayat Act clearly confers discretion upon the State Government to interfere or not to do so. The Government has a discretionary power either *suo motu* to call for records and examine the orders passed by the authorities specified in Clause (a), (b) and (c) or can be moved to so call for and examine the records on an application by a person. It is not as if the orders passed by the several authorities are not final. They are indeed final but the Government has been given discretionary power to call for and examine the records. The fact that a person is given a right to move the Government under this section to call for records and examine them does not necessarily confer any right on him to have the orders reviewed. It is a method of drawing the attention of the Revising authority to call for the records and examine them. The Revision authority may or may not call for the record of. If it does not call for them it need not give reasons for nor calling for the same or even for saying where it finds that it is a fit case in which it should interfere with the order, it must give notice to the party concerned, before passing any order. This appears to be the plain reading of the section and is the result of the free nature of the discretion conferred upon the Revising authority.

A reading of the above decision discloses that the Government under this section has been given discretionary power to call for and examine the records. If it does not call for them it need not give reasons for not calling for the same and even for saying that it is satisfied that the order under revision requires no interference, no reasons need be given. Only where it finds that its interference is called for, it must give notice to the parties concerned and assign reasons for its conclusion. In this case, since the Government after calling for the records do not wish to interfere with the matter and only confirmed the order, it need not give any reasons for such confirmation. In view of the same, no infirmity is discernible in the order passed by the Government in dismissing the revision.

Learned counsel for the petitioner submits that the property is belonging to the Water Distributory Committee, which has to accord permission to the petitioner for construction of bus shelter. If that be the case, if the petitioner is entitled to claim any right over the property, he has to approach the competent Civil Court establishing his rights over the said property, if any. But in this writ petition no relief can be granted to the petitioner.

Accordingly, the Writ Petition is dismissed at the admission stage.

A. Gopal Reddy, J.

24th September, 2004.

Js.

ASSISTANT REGISTRAR

To

1 The Government of Andhra Pradesh Panchayat Raj &

Rural Development (PTS.IV) Department,
rep.by Principal Secretary, Secretariat, Hyderabad

2 The District Collector, Krishna District

3 The District Panchayat Officer, Krishna District,

Machilipatnam

4 2 CCs to G.P. for Panchayat Raj & Rural Development, High

Court Buildings, Hyderabad.

5 2 CD copies.